

### **REMARKS**

Entry of the foregoing, reexamination and reconsideration of the subject application are respectfully requested in light of the amendments above and the comments which follow.

As correctly noted in the Office Action Summary, claims 2-5 and 9-38 were pending. By the present response, claims 10 and 38 have been amended and claims 22-28, 31 and 33 canceled. Thus, upon entry of the present response, claims 2-5, 9-21, 29-30, 32 and 34-38 remain pending and await further consideration on the merits.

Support for the foregoing amendments can be found, for example, in at least the following locations in the original disclosure: the original claims and the specification page 18, lines 8-11 and page 22, lines 5-6.

Entry of the foregoing is appropriate pursuant to 37 C.F.R. §1.116 for at least the following reasons. First, the amendments address the new grounds of rejection under 35 U.S.C. §112, second paragraph, thereby reducing the number of issues present upon appeal. Second, the amendments raise no new issues that would necessitate further search and/or substantive reexamination. Third, the amendments clearly overcome the grounds of rejection.

### ***EXAMINER INTERVIEW***

The applicants appreciate the Examiner interview conducted on June 15, 2004. Some material discussed in the interview has been substantively incorporated into this response.

***OBJECTION TO SPECIFICATION***

The Official Action at paragraph 1 objects to the Amendment filed December 24, 2003, as allegedly introducing new matter into the disclosure. This objection is respectfully traversed.

As discussed at the personal interview, applicants' insertion of the ratio 1:1.5 in claims 33 and 38 (now substantively incorporated into claim 10) is not new matter. Rather, the claim recites a mixing ratio of rigid component:ductile component of about 1:1.5. The specification at page 18, lines 8-11 and page 22, lines 5-6 disclose this mixing ratio. In the specification, the mixing ratio is presented as ductile component (LDPE):rigid component (HDPE). The disclosed mixing ratio of ductile component to rigid component is 1.5:1. Thus, when represented as rigid component:ductile component as expressed in the claims, it is apparent that both the specification and the claims recite the same rigid component:ductile component ratio. Accordingly, the insertion of a mixing ratio of about 1:1.5 into the claims is not new matter, but rather supported in the specification at the points noted.

The clarification of this point was discussed at the personal interview, during which the clarification was presented to rebut the objection to the specification.

***CLAIM REJECTIONS UNDER 35 U.S.C. §112***

Claims 2-21, 29, 30 and 32-38 stand rejected under 35 U.S.C. §112, first paragraph on the grounds set forth in paragraph 3 of the Official Action. This rejection is respectfully traversed.

Applicants have amended the claims to remove reference to the 1:1 mixing ratio. However, the presently claimed mixing ratio in claim 10 (mixing ratio of about

1:1.5) is not new matter, but rather is supported in the specification at the points indicated above. Thus, reconsideration and withdrawal of the rejection is respectfully requested.

***CLAIM REJECTIONS UNDER 35 U.S.C. §103***

Claims 2-5, 9-14, 16, 29, 30, 32-35 and 38 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,500,303 to Anderson (hereafter "*Anderson*") in view of WO 97/29150 to Rolle et al. (hereafter "*Rolle et al.*") on the grounds set forth in paragraph 5 of the Official Action. For at least the reasons noted below, this rejection should be withdrawn.

The rejection based on the combinations of disclosures in *Anderson* and *Rolle et al.* is improper because the proposed combination has not established a *prima facie* case of obviousness as required. See MPEP §2142-2143.

A proper obviousness rejection requires three elements. First, there must be motivation or suggestion for the proposed modification or combination. Second, there must be a reasonable expectation of success for the proposed modification or combination. Third, the proposed modification or combination must teach of the claimed elements.

Here, the rejection is improper for at least the third reason. Namely, the proposed combination of *Anderson* in view of *Rolle et al.* does not disclose or suggest each of the elements of applicants' independent claim 10. As clarified above with respect to the objection to the specification and discussed in the personal interview, the proposed combination of *Anderson* in view of *Rolle et al.* does not

disclose applicants' claimed mixing ratio of rigid component:ductile component of about 1:1.5.

The Official Action correctly notes that *Anderson* fails to disclose several of the limitations of applicants' independent claim 10. See page 3 of the Official Action. The Official Action then refers to the disclosure in *Rolle et al.* for its alleged teachings of expanded foam material comprising first rigid component and second ductile component. The Official Action then refers to *Rolle et al.*'s disclosure of blending the polypropylene foaming material and concludes that one of ordinary skill in the art would have discovered the optimal or workable ranges to arrive at the rejection of applicants' claim.

Applicants respectfully assert that the blending identified as disclosed in *Rolle et al.* have been inappropriately applied against applicants' claim. Namely, the blending in *Rolle et al.* consists of a rigid component that is "as much as possible towards 50%" of the blend. See page 6, line 4. *Rolle et al.* further discloses that the blend contains 60-90% rigid component, preferably 60-80% of the rigid component. See page 6, lines 12-14. Thus, the disclosure in *Rolle et al.* is to a blend in which the rigid component is as much towards 50%, and preferably more than 50% of the blend.

In contrast to the assertion in the Official Action, the disclosure in *Rolle et al.* would be understood by one of ordinary skill in the art to promote a high proportion of rigid component and would therefore teach away from applicants' claimed mixing ratio. Therefore, it is respectfully asserted that the combination of the disclosures in *Anderson* and *Rolle et al.* have not established the *prima facie* case of obviousness because the claimed mixing ratio of the present application is not disclosed, taught

or suggested. Accordingly, the elements of a *prima facie* case of obviousness have not been met. Withdrawal of the rejection is respectfully requested.

The rejection of the dependent claims should also be withdrawn because these claims depend directly or indirectly from applicants' independent claim 10 and therefore suffer the same above-noted deficiency as the rejection of claim 10. Withdrawal of these rejections is respectfully requested.

Claims 15, 17, 18, 20, 21, 36 and 37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Anderson*) in view of *Rolle et al.* and in further view of U.S. Patent No. 5,093,164 to Bauer et al. (hereafter "*Bauer et al.*") on the grounds set forth in paragraph 6 of the Official Action. Claim 19 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Anderson* in view of *Rolle et al.* and in further view of *Bauer et al.* and in further view of U.S. Patent No. 5,527,622 to Kato et al. (hereafter "*Kato et al.*") on the grounds set forth in paragraph 7 of the Official Action.

The rejection of the these claims based on the other cited references should be withdrawn because these claims depend directly or indirectly from applicants' independent claim 10 and the disclosures in the other cited references do not contribute to overcome the above-noted deficiency in the combination of *Anderson* and *Rolle et al.* Withdrawal of these rejections is respectfully requested.

**CONCLUSION**

From the foregoing, further and favorable action in the form of a Notice of Allowance is earnestly solicited. Should the Examiner feel that any issues remain, it is requested that the undersigned be contacted so that any such issues may be adequately addressed and prosecution of the instant application expedited.

Respectfully submitted,

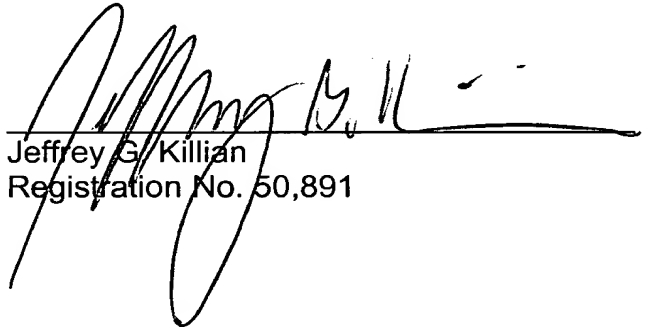
BURNS, DOANE, SWECKER & MATHIS, L.L.P.

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P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620

By: \_\_\_\_\_

Jeffrey G. Killian  
Registration No. 50,891

A handwritten signature in black ink, appearing to read 'Jeffrey G. Killian', is written over a horizontal line. The signature is fluid and cursive.